IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 61 of 2006
WITH
CIVIL APPLICATION NO. 2881 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAJIDBHAI AZIZBHAI KAPADIA - Appellant(s)
Versus
SABIRBHAI AZIZBHAI KAPADIA & 3 - Defendant(s)

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Appearance :

MR. B.T.RAO with MR S M SOJATWALA for Appellant(s) : 1,
MR. R.M.CHHAYA for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 11/08/2006

ORAL JUDGMENT

1. Instant Appeal from Order under Order 43 Rule 1(r) of the Code of Civil Procedure is directed

against the order dated 27.2.2006 recorded below application exhs. 6 and 7 – Notice of Motion in Civil Suit No. 1437 of 2003 by the learned Chamber Judge, Court No.14, City Civil Court, Ahmedabad, by which Notice of Motion application taken out by the Appellant has been dismissed and earlier order granting ad interim relief in favour of the Appellant has been vacated and accordingly Notice of Motion has been disposed of with no order as to costs.

2. This Court vide order dated 10.3.2006 Admitted the Appeal from order, and issued Rule in Civil Application No. 2881 of 2006, and stayed the impugned order, and the Respondents were directed not to alienate or transfer the property in question.

3. At the time of hearing of this Appeal from Order Mr. B.T.Rao, learned advocate of the Appellant and Mr. R.M.Chhaya, learned advocate for the Respondents jointly submitted that this Appeal from Order may be disposed of in terms of the order passed by this Court in Civil Application No. 2881 of 2006, by which the Respondents have been directed not to alienate or transfer the property in question and the said order may be directed to be further continued till the disposal of the Suit.

4. In view of the consensus arrived at between the parties, this Appeal from Order is required to be disposed of by issuing a direction that the Respondents will not alienate or transfer the

suit property till the disposal of Civil Suit No. 1437 of 2003, which is pending before the learned Judge of the City Civil Court, Ahmedabad.

5. For the foregoing reasons, this Appeal from Order is disposed of with no order as to costs. Accordingly, the Respondents are directed not to alienate or transfer the suit property till the disposal of Civil Suit No. 1437 of 2003.

6. In view of the order passed in Appeal from Order, no further order is required to be passed on Civil Application and the same is also disposed of accordingly. Rule is discharged with no order as to costs.

7. At this stage Mr. R.M.Chhaya, learned advocate of the Respondents states that since the Respondents have not filed appearance before the learned trial Judge, obviously they have not filed any Written Statement up till now, therefore, the Respondents may be permitted to file written statement and granted reasonable time to file the written statement against the averments made by the Petitioners in Civil Suit No. 1437 of 2003.

8. In view of the aforesaid state of affairs, the Respondents are permitted to file written statement and granted four weeks time from today to file the Written Statement against the averments made by the Appellant in Civil Suit No. 1437 of 2003. The learned trial Judge shall accept the Written Statement that will be filed

by the Respondents. The learned trial Judge, thereafter, shall proceed with the hearing of main Suit as expeditiously as possible.

9. Needless to mention that the order impugned under this Appeal from Order is interlocutory order, which has no bearing on the final result of the Suit, therefore, the learned trial Judge shall decide the Suit on the basis of the evidence produced before him, uninfluenced by the observations made while deciding the Notice of Motion in favour of the Respondents.

10. It is also made clear that this Court has not examined the merits of the matter and decided this Appeal from Order only on the consensus arrived at between the parties. The learned trial Judge, shall therefore examine the contentions raised by the Appellant and the counter contentions raised by the Respondents while deciding the Civil Suit No. 1437 of 2003.

11. Direct service as prayed for by both the parties is permitted.

(A.M.Kapadia,J)

Jayanti*